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The opinion in support of the decision being entered today was not
written for publication and is not binding precedent of the Board.

Paper No. 128

Box Interferences

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

MAR 5 2003

ELIZABETH G. NABEL and GARY J. NABEL

Junior Party
(Application 08/210,902)

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

v.

TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL
and STEPHEN E. EPSTEIN

Senior party
(Application 08/136,113)

Patent Interference No. 103,815

JUDGMENT

Interference 103,815

METZ, PATE and ELLIS, Administrative Patent Judges.

ELLIS, Administrative Patent Judge.

On February 26, 2003, junior party, Nabel et al., submitted a concession of priority and requested entry of an adverse judgment as to claims 1, 3-8, 12 and 14, designated as corresponding to the count. Paper No. 125.

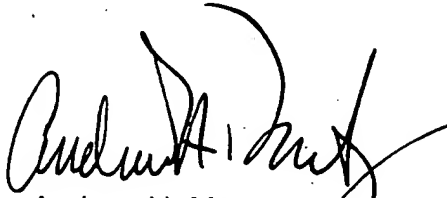
Accordingly, JUDGMENT as to the subject matter of Count 1 in issue is hereby awarded to senior party, TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL and STEPHEN E. EPSTEIN.


Accordingly, junior party, ELIZABETH G. NABEL and GARY J. NABEL, is not


entitled to a patent containing claims 1, 3-8, 12 and 14, corresponding to the count.

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On this record, senior party, TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL and STEPHEN E. EPSTEIN, is entitled to a patent containing claims 1-15, 17, 18 and 21 (see, Decision on Motion, Paper No. 102, p. 13).¹


Andrew H. Metz
Administrative Patent Judge)


William F. Pate, III
Administrative Patent Judge) BOARD OF PATENT
APPEALS AND


Joan Ellis
Administrative Patent Judge) INTERFERENCES

[by fax and first class mail]

JE/eld

¹ The APJ granted Nabel's preliminary motion 1 (Paper No. 42) for judgment on the ground that Finkel et al.'s claims 19 and 20 are unpatentable under 35 U.S.C. § 112, first paragraph, as being based on a specification that fails to provide an adequate written description of the invention. Paper No. 102, pp. 13-14. Finkel did not (i) oppose the motion in this regard, (ii) file a request for reconsideration of the APJ's decision (37 C.F.R. § 1.640(c)), or (iii) request a review of the motion at final hearing (37 C.F.R. § 1.640(b)). Accordingly, the finding of the APJ stands unchallenged.

Interference 103,815

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INTERFERENCE DIGEST

Interference N. 103,815 Paper N. 19

Name, Nabel et al.

Serial No. 08/210,902 Patent No. _____

Title, INHIBITION OF VASCULAR SMOOTH MUSCLE CELL PROLIFERATION

Filed, March 21, 1994

Interference with Finkel et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, _____ Dated, _____

Court, _____ Dated, _____

REMARKS
